

Appeal from decision of the Wyoming State Office, Bureau of Land Management, denying reinstatement of terminated oil and gas lease W 29963.

Reversed and remanded.

1. Oil and Gas Leases: Reinstatement

An oil and gas lease terminated by operation of law for failure of the lessee to pay the annual rental on or before the anniversary date of the lease may be reinstated only if the late payment is justifiable or not due to a lack of reasonable diligence. Where, for the first time on appeal, there are assertions concerning the death of lessee's husband, the case will be remanded to BLM for an initial determination as to whether circumstances demonstrate the requisite proximity and causality to justify the delay in payment, and reinstatement of the lease.

APPEARANCES: Agnes James, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Agnes L. James appeals from an August 22, 1979, decision of the Wyoming State Office, Bureau of Land Management (BLM), denying her petition for reinstatement of oil and gas lease W 29963 terminated by operation of law pursuant to 30 U.S.C. § 188(b) (1976) for failure to timely pay annual rental due on or before August 1, 1979.

Appellant's check for the rental payment, dated August 14, 1979, was received by BLM on August 17. The letter accompanying the check was treated by BLM as a petition for reinstatement. The letter advised that appellant had moved from Flint, Michigan, to Chicago,

that her mail was not being properly forwarded, and that she forgot about the rental due date.

BLM denied reinstatement because it found that the reasons for appellant's late payment did not constitute justifiable delay and reasonable diligence was not exercised in delivering payment.

In her statement of reasons appellant states that there was no excuse for forgetting to timely make the rental payment. She points out however, that her forgetfulness was due to her husband's death and the fact that she lost her home in Flint and was compelled to move to Chicago to live with her daughter.

[1] 30 U.S.C. § 188(c) (1976) and 43 CFR 3108.2-1(c) provide for the reinstatement of oil and gas leases which have terminated for failure to pay rental on time. A lease may be reinstated if failure to pay on time was either justifiable or not due to lack of reasonable diligence. In defining "justifiable" the Board has stated:

It seems reasonably clear that Congress by the word "justifiable" was adverting to a limited number of cases where, owing to factors ordinarily outside of the individual's control, the reasonable diligence test could not be met. This is thus a subjective test, dependent upon the factual milieu of the individual. We believe that cases which are so covered are those where the death or illness of the lessee or member of his close family, occurring [*sic*] with immediate proximity to the anniversary date, have been a causative factor in his failure to exercise reasonable diligence.

Louis Samuel, 8 IBLA 268, 274 (1972), appeal dismissed, Civ. No. CV-74-1112-EC (C.D. Calif. 1975); Fredres E. Laubaugh, 24 IBLA 306 (1976); See also Kenneth F. Santor, 13 IBLA 28, 210 (1973), aff'd, Santor v. Morton, 383 F. Supp. 1265 (D. Wyo. 1974).

According to the record BLM was apparently unaware of the assertions made in appellant's statement of reasons when it issued its decision. It appears from these assertions that the death of appellant's husband and her change of residence may well have been causative factors in her failure to pay rental timely. If so, the delay in payment would be "justifiable" under the law and reinstatement would be proper. Billy Wright, 29 IBLA 81 (1977).

We will therefore remand the case to BLM for an initial evaluation of whether reinstatement is warranted in light of the assertions made on appeal and such further data as appellant may offer in support of her position.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and remanded for further consideration consistent herewith.

Frederick Fishman
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Newton Frishberg
Chief Administrative Judge

